



REGULATORY AGENCY ACTION

DEPARTMENT OF SAVINGS AND LOAN

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The Department of Savings and Loan (DSL) is headed by a commissioner who has "general supervision over all associations, savings and loan holding companies, service corporations, and other persons" (Financial Code section 8050). DSL holds no regularly scheduled meetings, except when required by the Administrative Procedure Act. The Savings and Loan Association Law is in sections 5000 through 9001 of the California Financial Code. Departmental regulations are in Title 10, Chapter 2, of the California Administrative Code.

MAJOR PROJECTS:

Advertising Regulations Approved. On February 16, the DSL adopted proposed changes to its regulations regarding advertising and giveaways, which are located in Subchapter 4, Article 1, Title 10 of the California Code of Regulations (CCR). (See CRLR Vol. 8, No. 1 (Winter 1988) p. 83 for complete background information.) On March 16, the Office of Administrative Law (OAL) rejected the proposed regulatory package due to lack of clarity. The DSL amended the language to satisfy OAL's concerns and resubmitted the regulations, which were approved, filed with the Secretary of State on April 13, and became effective thirty days thereafter.

Proposed Appraiser Regulations Amended. Following an initial 45-day comment period and some minor technical amendments, the DSL's proposed changes to its Appraiser Classifications and Qualifications regulations (Title 10, Chapter 2, Subchapter 4, Article 3 of the CCR) were reopened for a 15-day comment period which ended on May 11. The Department is currently in the process of preparing the rulemaking file for submission to OAL. (See CRLR Vol. 8, No. 2 (Spring 1988) p. 90 for complete background information.)

FSLIC Deficit Increases. The Federal Savings and Loan Insurance Corporation (FSLIC), which insures deposits up to \$100,000 at savings and loans nationwide, is faced with liabilities of nearly \$11.6 billion more than the fund's assets at the end of 1987. In 1986, the fund's imbalance was \$6.3 billion and has nearly doubled because 204 institutions are insolvent but have been kept open because the government cannot

afford to close them and pay off depositors.

This April estimate prepared by the Federal Home Loan Bank Board was challenged on May 19 by the General Accounting Office as being too low. According to GAO, the FSLIC deficit could swell to at least \$36 billion in the years ahead.

On June 6, two southern California S&Ls were closed by the Federal Home Loan Bank Board. The Board had unsuccessfully attempted to merge the ailing institutions into healthy ones, and proceeded to close them and pay off their depositors a record \$1.35 billion.

In spite of the pessimistic outlook, U.S. Senator William Proxmire, Chair of the Senate Banking Committee, has pledged congressional support for the deposit insurance program.

LEGISLATION:

SB 2470 (Vuich) is an act to amend section 10012 of the Financial Code. The section currently authorizes, on and after July 1, 1987, a foreign (national) savings association incorporated under the laws of the regional western states and which is not directly or indirectly controlled by either a foreign (national) savings association incorporated under the laws of a state outside those western states or a foreign (national) holding company with its principal place of deposits located in a state outside of those regional western states, to conduct the business of an association in California or to acquire control of a California savings association. This bill would additionally provide that a foreign (national) holding company with its principal place of deposits in any of those regional western states may acquire control of a California savings association. This bill passed the Senate

and is pending on the Assembly floor at this writing.

AB 4203 (Moore), as amended May 16, would amend section 1364 of the Financial Code, which currently authorizes savings associations and commercial banks to invest in evidences of indebtedness of companies incorporated in the United States and which meet specified gross and net income requirements. This bill would relax those requirements in certain circumstances. This bill passed the Assembly and is pending in the Senate Banking and Commerce Committee.

AB 3669 (Bane) would amend section 8009 of the Financial Code, which currently provides that the Savings and Loan Commissioner and his/her employees shall not disclose any information acquired by them in the discharge of their duties, except as required by law, regulation, or court order. This bill would provide, for those purposes, that a court order does not include a subpoena duces tecum. This bill passed the Assembly and is pending in the Senate Banking and Commerce Committee.

AB 2855 (Bane) has been amended four times since reported in CRLR Vol. 8, No. 2 (Spring 1988) at page 91. In addition to all the provisions previously reported, this bill would require a bank to pay interest on savings accounts as to which a depositor has agreed to make periodic installment deposits at a rate of interest per annum that is not less than the lowest rate paid on other types of savings deposits rather than at a rate of interest as is paid on savings deposits; and recast the definition of "corporate debt security" with respect to agricultural, business, corporate, or commercial loans made by an association. This bill passed the Assembly on June 9 and is pending in the Senate Banking and Commerce Committee.



DEPARTMENT OF INDUSTRIAL RELATIONS

CAL-OSHA

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California's Occupational Safety and Health Administration (Cal-OSHA) is part of the cabinet-level Department of Industrial Relations (DIR). The agency administers California's programs ensuring the safety and health of government

employees at the state and local levels.

Cal-OSHA was created by statute in October 1973 and its authority is outlined in Labor Code sections 140-49. It is approved and monitored by, and receives some funding from, the federal OSHA.

The Occupational Safety and Health Standards Board (OSB) is a quasi-legislative body empowered to adopt, review,



amend, and repeal health and safety orders which affect California government employers and employees. Under section 6 of the Federal Occupational Safety and Health Act of 1970, California's safety and health standards must be at least as effective as the federal standards within six months of the adoption of a given federal standard. Current procedures require justification for the adoption of standards more stringent than the federal standards. In addition, OSB may grant interim or permanent variances from occupational safety and health standards to employers who can show that an alternative process would provide equal or superior safety to their employees.

The seven members of the OSB are appointed to four-year terms. Labor Code section 140 mandates the composition of the Board, which is comprised of two members from management, two from labor, one from the field of occupational health, one from occupational safety, and one from the general public.

The duty to investigate and enforce the safety and health orders rests with the Division of Occupational Safety and Health (DOSH). DOSH issues citations and abatement orders (granting a specific time period for remedying the violation), and levies civil and criminal penalties for serious, willful, and repeated violations. In addition to making routine investigations, DOSH is required by law to investigate employee complaints and any accident causing serious injury, and to make follow-up inspections at the end of the abatement period.

The Cal-OSHA Consultation Service provides on-site health and safety recommendations to employers who request assistance. Consultants guide employers in adhering to Cal-OSHA standards without the threat of citations or fines.

The Appeals Board adjudicates disputes arising out of the enforcement of Cal-OSHA's standards.

MAJOR PROJECTS:

Regulatory Action. OSB was scheduled to hold a public hearing on June 23 in San Francisco to hear public comment on proposed regulatory changes affecting section 3016(d)(4), Article 7, of Title 8 (Elevator Safety Orders); section 7-3016(d)(4) of Title 24, regarding access to elevator pits; section 1529, Article 4 of Title 8 (Construction Safety Orders); section 5208, Article 110 and section 5208.1 of Title 8 (General Industry Safety Orders); and section T8-5208, Part 6 of Title 24, regarding asbestos.

The Office of Administrative Law

(OAL) has approved regulatory changes involving section 3384 of Title 8 (Hand Protection); and sections 8345 through 8399, Appendix A and new Appendix B of Articles 1-10 (Ship Building, Ship Repairing and Ship Breaking Safety Orders). (See CRLR Vol. 8, No. 2 (Spring 1988) p. 92 for background information.)

The Building Standards Commission has approved a regulatory change which was approved by OSB in August 1987. The change affects section 3041(e), Title 8 (Elevator Safety Orders) and section 3041(e), Title 24. The changes have been submitted to OAL for filing. Because these changes affect Title 24, it is not necessary for OAL to approve them. (See CRLR Vol. 7, No. 4 (Fall 1987) p. 82 for details on the effect of this rule change.)

During its April 21 meeting in Sacramento, OSB adopted a proposed safety order on hazardous waste operations and emergency responses, as contained in section 5192 of Title 8 (General Industry Safety Orders). DOSH staff stated that the regulation is necessary to protect public sector employees at hazardous waste sites where the private sector employee is already protected by federal OSHA regulations. Board member David Smith asked if this type of rulemaking package would go forward regardless of whether Cal-OSHA is covering both public and private sector employees or only public sector employees. DOSH staff member Dr. Ciofalo replied that it would, since it affects public sector employees who are working at hazardous waste sites.

On May 31, OAL rejected section 5192, on grounds that the regulation did not meet the review standards of necessity, clarity, and authority. OAL also found that the OSB failed to meet procedural requirements for rulemaking. In large part, OAL's decision of disapproval focused on existing federal regulations which establish standards concerning hazardous waste operations. OAL found the federal regulations to be "more effective" than the rejected state regulation.

Initiative to Restore Cal-OSHA. In late May, an initiative to reinstate the Cal-OSHA private sector worker safety program qualified for the November 8 ballot. The initiative, sponsored by the Coalition to Restore Safety at Work (Coalition), collected 703,316 signatures. To qualify for the November ballot, 372,178 valid signatures were needed. California Labor Federal executive secretary-treasurer John Henning said that

the Coalition plans to put on a \$2 million campaign if any organized opposition surfaces. The Coalition includes labor organizations, as well as health, consumer, civil, legal, environmental, and some business groups. Governor Deukmejian's press secretary said that it is too early to tell whether the Governor will attempt to orchestrate opposition to the initiative. (For background information on the abolition of Cal-OSHA's private sector enforcement program, see *infra* LITIGATION; see also CRLR Vol. 8, No. 2 (Spring 1988) p. 92; Vol. 8, No. 1 (Winter 1988) pp. 84-85; Vol. 7, No. 4 (Fall 1987) pp. 80-81; and Vol. 7, No. 3 (Summer 1987) p. 106.)

LEGISLATION:

AB 2577 (Friedman), previously reported in CRLR Vol. 7, No. 3 (Summer 1987) at page 107, has been amended. Existing law makes it a crime for an employer, an employee having management, control, or custody of any place of employment, or other employee to willfully violate a safety order or other standards or provisions when this violation results in death or prescribed impairment. This bill would specify that nothing in these provisions prohibits a prosecution for manslaughter. AB 2577 passed both houses but the Assembly refused to concur in its latest amendments. Thus, the bill is in conference committee at this writing.

SB 2739 (Bergeson) would require the DIR to develop and maintain a program for the identification and abatement of asbestos materials in schools. DIR would be responsible for inspecting all public schools by no later than January 1, 1990; and by July 1, 1990 to serve upon the governing board of school districts, where it has determined there is a presence of asbestos materials which pose a significant health hazard, a notification of advice to undertake abatement (*i.e.*, a procedure to control fiber release from asbestos-containing materials, such as removal, repair, enclosure, or renovation). DIR would be able to seek reimbursement from school districts for the costs related to activities performed pursuant to the program for identification and abatement of asbestos materials. DIR would also have the authority to file suit in federal court to secure any relief necessary to protect health or environment under certain circumstances. At this writing, SB 2739 is pending in the Committee on Education.

AB 2889 (Floyd) would prohibit DOSH from withdrawing or amending an action on appeal so as to reduce



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either the seriousness of a citation or the amount of a civil penalty unless DOSH receives an order from the OSB. AB 2889 further stipulates that the OSB could not issue such an order unless DOSH demonstrates by a preponderance of the evidence that there is insufficient evidence to sustain the decision to withdraw or amend an action or that a material witness is unavailable. AB 2889 passed the Assembly on May 16 and is pending in the Senate Committee on Industrial Relations at this writing.

SB 1876 (Greene). Existing law specifies that certain places of employment, which by their nature involve a substantial risk of injury, be issued a permit by DOSH. This bill would expand the list of specified places of employment and would provide that the requirement for a permit not be limited exclusively to that list. This bill is pending in the Senate Committee on Industrial Relations at this writing.

AB 2774 (Floyd). Existing law contains various requirements for public works contracts entered into by a public entity. This bill would further require that every contract contain a provision requiring each contractor to comply with all OSHA regulations which apply to any work performed pursuant to the contract. AB 2774 passed the Assembly on May 12 and is pending in the Senate Committee on Governmental Organization at this writing.

AB 3790 (Floyd) would require OSHA to adopt standards, by September 1, 1989, concerning work involving contact with bodily fluids carrying the AIDS virus. This bill is set for its third reading in the Assembly at this writing.

AB 2999 (Speier). Existing law requires any contractor who engages in asbestos-related work to be certified by the Contractors State License Board (CSLB). Existing law also requires any employer or contractor who engages in asbestos-related work to register with DOSH. As amended, this bill would prohibit any person from advertising for the removal of asbestos unless certified for that work and would require any person advertising asbestos removal services to include his/her certification and registration number in that advertising. This bill would require that as a condition of certification by the CSLB, a contractor must also be registered with DOSH. AB 2999, which would also require the CSLB to establish an asbestos information program for the public, passed the Assembly on June 9 and is pending in the Senate Committee on Industrial Relations.

AB 3002 (Speier, et al.) would enact the 1988 Asbestos Exposure Control Act for Schools. Among other things, this bill would give the director of the DIR discretion to provide, to any school that so requests, technical assistance in complying with any state or federal statute or regulation relating to asbestos abatement. AB 3002 passed the Assembly on June 1 and is pending in the Assembly Committee on Ways and Means at this writing.

AB 3693 (Margolin) revises the definition of "affected employee" in the Occupational Carcinogens Control Act of 1986. This bill clarifies that the definition includes employees who, as part of their employment, are involved in the use of a carcinogen, in addition to employees to whom there is a substantial probability that they will become exposed as a result of their employer's use of a carcinogen. An April 6 hearing before the Assembly Committee on Labor and Employment was cancelled at the request of the author.

AB 3713 (Connelly) would require owners of any building constructed prior to 1979 who know that the building contains asbestos to provide written notice within fifteen days of the receipt of such information to all employees concerning the presence and location of asbestos in the building. In a situation where any construction or maintenance is conducted in an area of the building where there is a potential for exposure to asbestos, a clear and conspicuous warning notice must be displayed describing the existence of the asbestos along with information regarding proper procedures and handling restrictions. In addition, certain data regarding the existence and danger of the asbestos conditions on the premises must be available to an employee upon request. Violations by building owners would be punishable as misdemeanors. AB 3713 passed the Assembly on June 2 and is pending in the Senate Committee on Industrial Relations at this writing.

AB 3782 (Floyd). Existing law permits DOSH to issue an order prohibiting use if the Division has reasonable cause to believe that any workplace contains friable asbestos and if there appears to be inadequate protection for employees at that workplace from the hazards associated with airborne asbestos fibers. AB 3782 would require, rather than permit, DOSH to issue these orders where the above conditions are met. AB 3782 passed the Assembly on May 12 and at this writing is pending in the Senate Committee on Industrial Relations.

AB 4229 (Bronzan). Existing law requires DOSH to inspect each installed fired boiler internally and externally at least every year, except that the Division may grant extensions for internal inspections where operating experience and design of the boiler has demonstrated to the satisfaction of the Division that equivalent safety will be maintained. This bill would lengthen the duration of the extension. AB 4229 passed the Assembly on May 12 and is pending in the Senate Appropriations Committee.

The following is a status update on bills which were discussed in detail in CRLR Vol. 8, No. 2 (Spring 1988) at page 92:

SB 1858 (Green), regarding the restoration of Cal-OSHA, has been placed in the inactive file.

AB 2901 (Floyd), regarding video display terminals, was set for hearing before the Assembly Committee on Labor and Employment on April 6. The hearing was cancelled at the request of the author.

AB 2888 (Floyd), regarding per diems for OSB members, was amended on April 19. The amendment would restore the OSB members' existing salaries, in lieu of the per diem amount, when the director of the DIR notifies the legislature that DOSH has determined that a final decision has been made again vesting Cal-OSHA with the responsibility of enforcing health and safety in the private sector. AB 2888 passed the Assembly on June 1 and is pending before the Senate Committee on Industrial Relations.

AB 2884 (Margolin), regarding carcinogens, passed the Assembly Committee on Labor and Employment and at this writing is pending in the Assembly Committee on Ways and Means.

AB 867 (Floyd), which would attempt to restore Cal-OSHA private sector operations, is pending in the Senate Appropriations Committee.

LITIGATION:

At this writing, no date for oral argument before the California Supreme Court has been scheduled in *Ixta, et al. v. Rinaldi*, No. C002805 (Third District Court of Appeal). Responses to amicus briefs were due by June 13. A date for argument will be set after that date unless additional amicus briefs are submitted prior to that time. In appellate proceedings, the Third District unanimously ruled that Governor Deukmejian exceeded his authority when he vetoed \$7 million in Cal-OSHA funding from the state budget in 1987. (See CRLR



Vol. 8, No. 2 (Spring 1988) p. 92; Vol. 8, No. 1 (Winter 1988) p. 85; Vol. 7, No. 4 (Fall 1987) pp. 80-81; and Vol. 7, No. 3 (Summer 1987) p. 106 for background information.)

RECENT MEETINGS:

At its March 24 meeting in San Diego, OSB granted permanent variances to the following entities: Terre Du Soleil, Northridge Park Development Company, the Shanti Project, Lewis Tanenbaum, MD, and Payless Cashways, Inc., from section 3000(c)(13), Title 8 (Elevator Safety Orders); First Interstate Bank of California and the County of Los Angeles from section 501(c), Title 8 (Unfired Pressure Vessel Safety Orders); and O'Connor Convent from section 3000(d)(11), Title 8 (Elevator Safety Orders). The Board denied a permanent variance requested by Gorman-Whitney Development Company, from section 3054(a)(5)(D), Title 8 (Elevator Safety Orders).

OSB was also updated on the current status of the 1988-89 Governor's budget.

OSB Executive Officer Steve Jablonsky stated that the Governor's budget proposes to reestablish five permanent positions with the OSB, in addition to the Board members and the Executive Officer. The Legislative Analyst's analysis of the Governor's budget, however, estimates that the ongoing workload of the OSB can be accomplished with 2.5 positions. On March 15, Jablonsky met with the Legislative Analyst, representatives from the Department of Finance, and DIR budget staff. Jablonsky stated that the Analyst did not seem to recognize that the transfer of enforcement to the federal government in the private sector will in itself have no major impact on OSB's workload and responsibilities, or that the first six months' workload after July 1, 1987, was not indicative of the ongoing workload.

FUTURE MEETINGS:

September 22 in Los Angeles.

October 13 in San Francisco.

November 17 in San Diego.

December 15 in Sacramento.

and straying;

2. Division of Plant Industry—Protects home gardens, farms, forests, parks and other outdoor areas from the introduction and spread of harmful plant, weed and vertebrate pests;

3. Division of Inspection Services—Provides consumer protection and industry grading services on a wide range of agricultural commodities;

4. Division of Marketing Services—Produces crop and livestock reports, forecasts of production and market news information and other marketing services for agricultural producers, handlers and consumers; oversees the operation of marketing orders and administers the state's milk marketing program;

5. Division of Pest Management—Regulates the registration, sale and use of pesticides and works with growers, the University of California, county agricultural commissioners, state, federal and local departments of health, the United States Environmental Protection Agency and the pesticide industry;

6. Division of Measurement Standards—Oversees and coordinates the accuracy of weighing and measuring goods and services; and

7. Division of Fairs and Expositions—Assists the state's 80 district, county and citrus fairs in upgrading services and exhibits in response to the changing conditions of the state.

In addition, the executive office oversees the activities of the Division of Administrative Services, which includes Departmental Services, Financial Services, Personnel Management and Training and Development.

The Board of Food and Agriculture consists of the executive secretary, assistant executive secretary and 14 members who voluntarily represent different localities of the state. The Board inquires into the needs of the agricultural industry and the functions of the Department. It confers with and advises the Governor and the director as to how the Department can best serve the agricultural industry. In addition, it may make investigations, conduct hearings and prosecute actions concerning all matters and subjects under the jurisdiction of the Department.

At the local level, county agricultural commissioners are in charge of county departments of agriculture. County agricultural commissioners cooperate in the study and control of pests that may exist in their county. They provide public information concerning the work of the county department and the resources of their county, and make reports as to



DEPARTMENT OF FOOD AND AGRICULTURE

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The Department of Food and Agriculture (CDFA) promotes and protects California's agriculture and executes the provisions of the Agriculture Code which provide for the Department's organization, authorize it to expend available monies and prescribe various powers and duties. The legislature initially created the Department in 1880 to study "diseases of the vine." Today the Department's functions are numerous and complex.

The Department works to improve the quality of the environment and farm community through regulation and control of pesticides and through the exclusion, control and eradication of pests harmful to the state's farms, forests, parks and gardens. The Department also works to prevent fraud and deception in the marketing of agricultural products and commodities by assuring that everyone receives the true weight and measure of goods and services.

The Department collects information regarding agriculture, and issues, broadcasts and exhibits that information. This includes the conducting of surveys and investigations, and the maintenance of laboratories for the testing, examining and diagnosing of livestock and poultry diseases.

The executive office of the Department consists of the director and chief deputy director who are appointed by the Governor. The director, the executive officer in control of the Department, appoints two deputy directors, one of whom serves as legislative liaison and as executive secretary of the Board of Food and Agriculture. In addition to the director's general prescribed duties, he may also appoint committees to study and advise on special problems affecting the agricultural interests of the state and the work of the Department.

The executive office oversees the activities of seven operating divisions:

1. Division of Animal Industry—Provides inspections to assure that meat and dairy products are safe, wholesome and properly labeled and helps protect cattle producers from losses from theft